

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cheryl E. Zemont

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EXAMINER: Michael A. Brown

FILED: July 2, 2003

ART UNIT: 3764

TITLE: Healthy Body Ball

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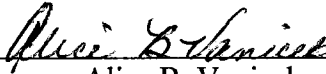
Mail Stop Appeal Brief - Patents  
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P.O. Box 1450  
Alexandria, VA 22313-1450

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Gavin J. Milczarek-Desai  
Quarles & Brady Streich Lang  
One South Church Avenue, Suite 1700  
Tucson, AZ 85701

CERTIFICATE OF TRANSMISSION

I hereby certify that on this 13th day of September, 2006, this correspondence is being transmitted via EFS-WEB to the U.S. Patent and Trademark Office, Patent Technology Center 3700, Art Unit 3764.



Alice B. Vanicek

TO THE COMMISSIONER FOR PATENTS

REPLY BRIEF

Dear Sir:

This is in response to the Examiner's Answer dated 13 July 2006.

## REMARKS

A. In *Response to Argument* on Page 3 of the Examiner's Answer, the Patent and Trademark Office states the following:

Clearly Cassidy discloses a spherical ball (A), having pliable nodes. There are more than 14 nodes on the ball disclosed by Cassidy. Thus, there is an array on the spherical ball that includes between 8 to 14 nodes.

The Appellant respectfully contends that the last two sentences of this statement by the Examiner plainly contradict each other. On the one hand, the Examiner states that Cassidy discloses more than the claimed "between 8 and 14 nodes." On the other hand, the Examiner states that Cassidy therefore discloses a spherical ball that includes between 8 and 14 nodes. What is missing from this analysis is the reason *why* Cassidy's "more than 14 nodes" necessarily teaches or suggests "between 8 to 14 nodes," as claimed.

If the Examiner is contending that the disclosure of any number of nodes greater than what is claimed is, by itself, sufficient to anticipate or render obvious any lesser number of nodes, then the Appellant respectfully submits that the Examiner is improperly ignoring the subject claim limitations. Moreover, the Examiner is ignoring the well established test for prima facie obviousness (e.g., *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). This is because there is no suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify Cassidy's ball to contain only between 8-14 nodes as is claimed by the Appellant.

The fact that Cassidy "also teaches that the nodes can be arranged at any desire [sic] distance from each other...and in any suitable arrangement" (Examiners Answer, page 4) does nothing to further the Examiner's argument because the disclosure of "any suitable arrangement" does not teach or suggest any arrangement in particular. In other words, the Examiner's statement is a *non-sequitur* because the absence of a specific teaching or suggestion for the structure claimed by the Appellant cannot render that claimed structure obvious.

Moreover, if the Examiner's contention is taken to its logical conclusion, a patent applicant would never be able to receive a patent on an invention that has fewer of a similar component than is found in the cited art. For example, an automobile having four wheels would automatically anticipate or render obvious claims limited to a two-wheeled motorcycle or a motorized unicycle simply because the automobile contains more than the claimed one or two wheels. This would be despite the fact that there is no teaching or suggestion that the automobile would function, let alone have a critical advantage, with one or two wheels.

B. In *Response to Argument* on Page 4 of the Examiner's Answer, the Patent and Trademark Office states the following:

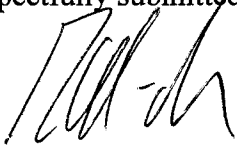
Sakai provides a teaching of forming the nodes of the same length and diameter recited in the claims.

The Appellant respectfully disagrees. The Sakai reference discloses a non-spherical foot and leg massager that has nodes of many different lengths and diameters. What neither Sakai, nor any other reference, provides is any motivation or suggestion to specifically construct nodes that are all limited to "between one-half inch to one inch in both length and diameter" on a spherical ball

as claimed by the appellant. Thus, one of ordinary skill in the art is not taught to produce a ball with the appellant's claimed node length and diameter limitations any more so than she would a ball featuring any of the other node lengths and diameters disclosed by Sakai. As discussed above, the Examiner again fails to explain why one of ordinary skill in the art would necessarily be motivated to construct a ball that is limited to having all of the nodes be between one-half to one inch in both length and diameter when Sakai teaches many different node lengths and diameters (see, e.g., Figs. 2 and 3; col. 4, lines 3-6 "In this embodiment, there are used four types of bosses with different diameter....").

In view of the above, the Appellant respectfully requests that the rejection of all claims on appeal be reversed in their entirety.

Respectfully submitted,



Gavin J. Milczarek-Desai  
Reg. No. 45,801

(520) 770-8700 Telephone  
(520) 623-2418 Fax